ing heard arguments of counsel in support of and in opposition to said motion, and having considered the mandates of the Circuit Court of Appeals filed this day affirming the orders of the Court approving and confirming the plan of reorganization herein, pursuant to the denial herein of all petitions for certiorari by the Supreme Court on April 19, 1943, and being fully advised in the premises,

IT IS ORDERED that the motion of Chicago and North Western Railway Company, Debtor, for leave to file said petition be, and it hereby is, denied.

ENTER: BARNES,
Judge.

Dated: April 27, 1943.

APPENDIX C.

United States of America
Northern District of Illinois
Eastern Division, at Chicago

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION, AT CHICAGO

IN PROCEEDINGS FOR THE
REORGANIZATION OF A RAILROAD

In the Matter of
CHICAGO AND NORTH WESTERN
RAILWAY COMPANY,
Debtor. } No. 60448.

TRANSCRIPT OF PROCEEDINGS
AND
CERTIFICATE OF EVIDENCE

The following is a Shorthand Report and Transcript of the Proceedings had in the above-entitled cause before Hon. John P. Barnes, one of the Judges of said Court, beginning at the hour of 10:00 o'clock a. m. on Tuesday, the 27th day of April, A. D. 1943, pursuant to Notice, upon the Motion of Chicago and North Western Railway Company, Debtor, for leave to file a petition for an order directing Charles M. Thomson, Trustee of the Debtor's estate, to pay off the claim of the Reconstruction Finance Corporation, with interest at 4 per cent, and for an order trans-

mitting the proceedings to the Interstate Commerce Commission for consideration of modification in the plan of reorganization of the Debtor consequent upon the payment of the said claim of the Reconstruction Finance Corporation; or, in the alternative, for an order transmitting the proceedings to the Interstate Commerce Commission with directions promptly to consider and report upon whether, under the present circumstances, the plan of reorganization of the Debtor should be so modified as to provide for the payment, in cash, of the claim of the Reconstruction Finance Corporation with interest at 4 per cent, and consequent modification of the plan insofar as securities are concerned that may be required or authorized by the said payment in cash of said claim.

PRESENT:

Trustee of Property of Debtor:
Charles M. Thomson, *pro se,*
(400 W. Madison St., Chicago, Ill.)
Life Insurance Group Committee:

Messrs. Sidley, McPherson, Austin & Burgess,
(11 S. LaSalle St., Chicago, Illinois),
represented by Kenneth F. Burgess, Esq., Douglas F. Smith, Esq., and George Ragland, Jr., Esq.

DEBTOR:

Luther M. Walter, Esq., and
Helen W. Munsert,
(135 S. LaSalle St., Chicago, Ill.)

Interveners, Helen S. Asher, Louis Susman, Lesch C. and Cuba E. Forrest, (Individual Bondholders),
Meyer Abrams, Esq. and Norman Asher, Esq.,
(134 N. LaSalle St., Chicago, Ill.)
represented by Norman Asher, Esq.

George P. Bovenizer, Charles F. Batchelder and John E. Rovensky, As a Committee Representing Holders of Collateral Notes of Chicago and Northwestern Railway Company:
Messrs. Cravath, deGersdorff, Swaine & Wood,
(15 Broad St., New York, N. Y.), and
Messrs. Mayer, Meyer, Austrian & Platt,
(231 S. LaSalle St., Chicago, Ill.),
represented by H. T. Brown, Esq.

Irving Trust Company (Successor Trustee under Indenture of Milwaukee and State Line Railway Company):
Messrs. Davies, Auerbach, Cornell & Hardy,
(One Wall St., New York, N. Y.), and
Messrs. Isham, Lincoln & Beale,
(72 W. Adams St., Chicago, Ill.),
represented by James P. Dillie, Esq.

Chemical Bank & Trust Company (Successor Trustee under Indenture of St. Louis, Peoria and North Western Railway Company):
Messrs. Chadbourne, Hunt, Jaeckel & Brown,
(70 Pine St., New York, N. Y.), and
William D. Kerr, Esq.,
(105 S. LaSalle St., Chicago, Ill.),
represented by William D. Kerr, Esq.

United States Trust Company (Trustee under Debtor's General Gold Bond Mortgage of 1987, Debtor's Trust Indenture, dated March 1, 1921, Debtor's Equipment Trust Agreements of 1925, 1927, and 1929:
Messrs. Stewart & Shearer,
(45 Wall St., New York, N. Y.), and
Messrs. Wilson & McIlvaine,
(120 W. Adams St., Chicago, Ill.),
represented by Calvin F. Selfridge, Esq., and Sidney K. Jackson, Esq.

Law Department of Trustee,
(400 W. Madison St., Chicago, Ill.):
Lowell Hastings, Esq.

And other Counsel.

And thereupon the following proceedings were had herein:

THE CLERK: No. 60448. In the Matter of Chicago and North Western Railway Company, Debtor: Motion of Chicago and North Western Railway Company, Debtor, for leave to file a petition for an order directing Charles M. Thomson, Trustee, to pay off the claim of the Reconstruction Finance Corporation, with interest at 4 per cent, and for an order transmitting the proceedings to the Interstate Commerce Commission for consideration of modification in the plan of reorganization of the Debtor consequent upon the payment of the said claim of the Reconstruction Finance Corporation; or, in the alternative, for an order transmitting the proceedings to the Interstate Commerce Commission with directions promptly to consider and report upon whether, under the present circumstances, the plan of reorganization of the Debtor should be so modified as to provide for the payment, in cash, of the claim of the Reconstruction Finance Corporation with interest at 4 per cent, and consequent modification of the plan insofar as said payment in cash of said claim; and to fix the time for answer, and for hearing upon said petition and answers.

MR. WALTER: If your Honor please, the mandate has been received from the Court of Appeals, the Supreme Court having denied the issuance of a writ of certiorari.

THE COURT: What does the mandate say?

MR. WALTER: I beg pardon?

THE COURT: What does the mandate say?

MR. WALTER: Well, the advice from the Clerk of the Supreme Court is that the motions for leave to

supplement the records in numbers—(and then it gives the numbers), are granted.

The petitions for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit, in all of the cases, are denied.

Now, I am asking leave to file a petition which in the alternative would direct the trustee to pay the claim of Reconstruction Finance Corporation, in cash, and remand the proceedings to the Commission for modification of the plan which would be required by such payment, or in the alternative that the case be remanded to the Commission to consider modification of the plan contemplating the payment in cash, in whole or in part.

At the time—I recite in the petition the cash position, on the theory that a court of equity has a right, when changed conditions have interposed which require action, the court can take such action.

If the court permits the petition to be filed, we expect to prove that at the time the Commission handed down its plan there was approximately twelve and a quarter millions of cash. When this court approved the plan, there was approximately seventeen million dollars, and that on April 19, 1943, there was in excess of eighty million dollars of cash, temporary cash investments and special deposits.

The total amount of the claim of Reconstruction Finance Corporation, with interest at four per cent—and your Honor will recall that they agreed to take four per cent after reorganization had been effected—is slightly more than forty-eight and a quarter million dollars.

The cash, forty-four million, eight hundred and ninety-three thousand, is not drawing any interest at all.

The temporary cash investments are in Government

securities, seven-eighths of one per cent, and certain special deposits of approximately seven million, make the eighty million dollars.

A recent decision by the Court of Appeals of this Circuit, which is not yet reported—March 22, 1943, in the Milwaukee case, recites the facts with reference to the particular matter presented, and then has this to say:

> "Since the proceedings and orders of a Bankruptcy Court are interlocutory until entry of the discharge,"—

and then citing Supreme Court decisions, 297 U. S., 301 U. S.—

> "and may be modified and rescinded before final decree, * * * and if no intervening rights will be prejudiced, the Court may grant a rehearing."

No intervening rights being prejudiced, a petition for rehearing was granted.

Our theory is this, that had the cash been available, as you have stated in your opinion, the claim of the R. F. C. could have been paid.

One hundred and thirty-five million dollars of securities are turned over, eighty-five million of them outright, and the forty-nine million as collateral for a twenty-five million note to the R. F. C.

As your Honor knows, the Federal Government is getting all of the money it can. I cannot see why there should be any objection from the creditors whose status under reorganization will be improved if this is paid. Nobody can be injured.

While the Supreme Court took over a year and a day, and then some, to say "No" to our petition for writs, and did not pass on what we regard as fundamental questions, we still have time to ask them for

rehearing; but it occurs to me, since you have authority in your discretion to send this back to the Commission to consider the plan, that the necessary time ought to be consumed, with the vast interests involved, and the public interest involved, in paying this off, stopping the accumulation of interest, eliminating the Reconstruction Finance Corporation from its control, and operation of this property.

As you well know, in the many plans of reorganization proposed, the institutional investors, Savings Bank groups, and R. F. C. are given the control of the properties.

It is not in the public interest, I submit, for the R. F. C. to have any such control. Here with the adjustment bonds getting something like forty-six million, with forty million untaken care of, with nothing for the preferred stockholders and nothing for the common, when that can be remedied by the simple equitable act of paying this claim and having the Commission revise the plan, it certainly ought to appeal to the equity of the Judge, to your discretion.

Now, we are asking to have you authorize the filing of the petition, and that you direct answers to be filed, and set the case for hearing. I pledge in as far as it is in my power, that I will do everything to expedite the action.

MR. SMITH: Your Honor, we have reached a turning point in this case. We have entered upon a new phase of the proceeding—or hope we have entered a new phase, a phase in which this debtor has no interest. And on behalf of the two groups, and on behalf of the reorganization managers, we would like a few minutes, if we may, to state our position. May we do that?

MR. ASHER: If the Court please, maybe we will

save some of the points that may be raised here on behalf of the convertibles. We would like to join in and adopt Mr. Walter's motion; and we think they have no argument against us, that we have no part in the plan.

THE COURT: Let's see what he has to say. Your request is what?

MR. SMITH: To state the position of the reorganization managers and the groups, on this petition.

THE COURT: How much time do you want?

MR. SMITH: Four or five minutes.

THE COURT: Go ahead.

What do you want to say?

MR. ASHER: On behalf of the convertibles who do participate in the plan, there is no argument about that, we want to join in and adopt the petition and motion of Mr. Walter on behalf of the debtor.

Now, by this action we are not waiving any right we have for rehearing before the Supreme Court. We may file such a petition on the question of fact and the question of subordination and subrogation that we have raised, but as far as the general merits of the plan, we are not against that at all; but on this phase of the question we think that it will benefit all parties, and we are joining in that motion.

THE COURT: Has the mandate been returned? Go ahead.

MR. SMITH: This is a motion for leave to file a petition which seeks to change this plan, your Honor, not to make some adjustment of debt within the framework of the plan, but to change the plan.

Now, we ask the Court not to permit that petition to be filed, but to deny it on two separate and independent grounds. To deny it first on the ground that

the plan has been approved and confirmed by this Court.

As this Court has said, it is a good plan, if not a perfect plan. Above all, it is a lawful plan, and under Paragraph f of Section 77, there is a specific direction to put into effect and to consummate the approved and confirmed plan.

So we ask the Court here to enter an order denying this motion and refusing to entertain the petition on the ground, first, that he does not desire to see a change of this plan which he has approved and confirmed.

Secondly, we ask the Court to refuse to entertain this petition on the ground that he has no jurisdiction to entertain it. We believe that there is no jurisdiction in this Court or in any court, to change this plan, now that it has been finally and authoritatively confirmed.

There is jurisdiction only to make such minor adjustments in the debt structure as can be done within the framework of the plan or to make those minor changes which the Commission contemplated, changes of the sort that it referred to as minor corrections and omissions, changes which this Court reserved jurisdiction to make.

Now, Mr. Walter has said to your Honor that surely there is jurisdiction in this Court to do what he requests. I think Mr. Walter has admitted within a month, in the Supreme Court of the United States, that this Court does not have any such jurisdiction.

It may surprise this Court to know that Mr. Walter has filed five briefs in the Supreme Court, in the course of a year—the last on April 1st, the last four of those briefs within three and one-half months. And in the last brief that he filed, he argued—as he did in every

one of those briefs, this matter of paying the R. F. C.; and in the very last brief he specifically asked the Supreme Court, if it denied certiorari, to reserve in its denial, in its mandate, jurisdiction in this Court, so that it could act upon this motion which he then contemplated filing.

Now, there has been filed in this Court today, the Supreme Court's unqualified denial of certiorari, made in the face of that specific request; and so I say it stands conceded that this court does not have jurisdiction—and we ask that an order be entered on those two grounds.

Now, there is one other point in this matter which we think we must make, inasmuch as this motion records a continuance of the debtor's efforts in this case after the final determination by the Supreme Court, in its refusal to accept the case.

The debtor's position in this litigation, your Honor, has been described by this Circuit Court of Appeals in its opinion which Mr. Walter got from that Court in the proceedings in which he finally obtained authority from your Honor to permit the expense of this appeal.

In its opinion the Circuit Court of Appeals has described what the position of the debtor would be in the event it should be determined that there was no interest in the stock, an event which has now transpired.

Here is what the Circuit Court of Appeals said:

> "If the stockholders have no interest in the debtor, due to its failure to show assets sufficient to pay its debts, then, the court would be unwarranted in taking funds, belonging to the creditors, but inadequate to pay all creditors' claims in full, and permit stockholders to prolong the litigation and increase the costs and expenses of administering the debtor's estate. To do this would be to

> place a premium on the efforts of those who are capitalizing on nuisance value, and no premium should be placed on the efforts of those who specialize in creating nuisance values. Their ingenuity, panurgy, and persistence need no encouragement."

Now this Court, almost immediately after it approved this plan, expressed the view very strongly that, in the public interest and in the light of the private interests involved, there ought to be an appeal from the Court's decision and a full review of that decision.

The Court believed it had no power to grant funds, in advance of the action by the Interstate Commerce Commission thereon, to carry on that appeal; but the Court did think it ought to be done, and said so strongly, and, under the authority of the Circuit Court of Appeals, in an opinion with which the Court was unable to agree but was cheerfully anxious to follow, this Court provided funds for this appeal.

Those funds were made full use of, as I have said. We have had a feverish, frantic activity in the Supreme Court in the last four months, which culminated in the filing of four briefs by Mr. Walter, in which this question was completely argued.

Now here we are discussing again the same matter. The debtor has had its day in court, only in a quaint sense: It has had eight years in court. We hope the Court will find it appropriate to say now, just as he made it clear to everybody before that there ought to be a full opportunity to make and have a full appeal, that, having had that opportunity, and a full appeal having been had, and a complete and full decision having been made by the Circuit Court of Appeals, and appeal therefrom to the Supreme Court of the United States allowed, and that appeal denied by the

Supreme Court, that now the matter should finally be ended. And we hope the Court will find it appropriate to say now that no more litigation is going to be financed by the estate on behalf of those who have been found to have no interest, and the name of the North Western is not to be used for that purpose, and the show is over, and the curtain has been rung down, and we are entering on a different phase of this proceedings namely, the task of consummating this plan.

And we suggest, your Honor, if that is not done, the chances are that we will be constantly finding it necessary to turn aside from the work in consummating the plan, to deal with the activities of those who have no interest in this proceeding; and we ask the Court to use its good offices to prevent that.

MR. BROWN: If the Court please, may I say, on behalf of the Bovenizer Committee, representing the collateral noteholders, that we concur in the argument advanced by Mr. Smith.

MR. WALTER: May I ask if the R. F. C. is prepared to state its position?

Apparently they have nothing to say.

I just have this to say by way of reply.

The petitions for certiorari were granted in the Milwaukee, and Western Pacific cases. No action was taken on the North Western. And as the months went by, and the position of the North Western improved, I filed motions to supplement the record, by introducing balance sheets and certificates of the Comptroller as to cash on hand, and so forth.

As further months went by I repeated that action.

All of those have been received.

Now, in the December 17th motion to supplement

the record, after stating the facts, "the plan of reorganization has not yet become"—reading from that motion—"has not yet become effective."

> "The plan of reorganization has not yet become effective. Should this Court deny writs of certiorari herein, and fail to require payment of the debt due the Reconstruction Finance Corporation, the debtor corporation desires to present to the District Court a petition for an order directing the Trustee to pay the claim of the Reconstruction Finance Corporation. * * * Prayer is therefore made that, should the petition for writs of certiorari be denied, the mandate of this Court will definitely provide that such action is taken without prejudice to the exercise of equitable jurisdiction of the District Court in accordance with Section 77.
>
> "Such a proviso is necessary to dispel any doubt that the District Court might otherwise have that it is not within its jurisdiction to entertain such petition."

Now, I plead guilty to having done my best to get the Supreme Court to let us present our case and at least to have a memorandum from that Court which would express some of the views of that Court on the matters involved in this case that were not involved in the Milwaukee, or the Western Pacific.

I do not know why it held the case so long, and why it sent it back without any action. But perhaps the Court was conscious of its own decisions in bankruptcy cases, that the Court did have jurisdiction to entertain any motion, practically, for conditions which have changed the position of the debtor, so that this position could be shown.

The Interstate Commerce Commission, under the recent decisions, is the only party that can make a plan of reorganization.

It seems to me that in a very short time that Com-

mission could say to this Court whether it thought there ought to be a modification of the plan to give effect to the payment of the Reconstruction Finance Corporation loan.

The Court said that you could not do anything but present a plan or make suggestions.

I pointed out to the Court that four modifications in the plan were made by the decree of this Court, unopposed by anybody, but the Interstate Commerce Commission alone can make the plan.

But they say nothing in this case of the application of the principle laid down in the Milwaukee case, that the Commission must O. K. the plan in every syllable.

So I am asking this Court, in the protection of the rights of everybody, including those who are here opposing it, by paying up now, in advance of twelve months from today.

The Commission pointed out, in one of its decisions, that the North Western had a uniform record for fifty-four years of having paid its dividends, and even up to 1934 it had done that. But in 1934 it came upon the times that we all did in this country.

Now, the cash is there. It can be paid. Nobody can be injured, and those creditors who have participated in the plan can be strengthened in their position, and then the equity interests can stand in line.

Too much has this Government of ours become, and is becoming, a government of men rather than of laws; and we appeal to your judgment, your discretion, to send this case back to the Commission, even though it take a few months. Better that than be wrong. And I urge you to allow us to present the petition in any way that might appeal to the Court, with or without any change.

I would like to have the Interstate Commerce Commission's position upon this petition. No one can be hurt.

THE COURT: Well, now, in this petition—Have you concluded?

MR. WALTER: I think that is all.

It may be, if the Court has any doubt about whether this should be filed, that we ought to file a memorandum of authorities. It is an important matter.

THE COURT: No. I don't think it is necessary, unless your answers to my questions change my view.

MR. WALTER: I didn't get the Court's statement.

THE COURT: I don't think it is necessary to file a memorandum of authorities, unless your answers to the questions which I am about to propound may change my views.

MR. WALTER: All right.

THE COURT: In this petition that you are presenting this morning, you make the statement that there has been a change in the financial position of the debtor.

MR. WALTER: Yes.

THE COURT: For the better.

MR. WALTER: We say now there is eighty millions on hand, aside from working capital and so forth.

THE COURT: You presented those same facts to the Supreme Court?

MR. WALTER: No.

THE COURT: How?

MR. WALTER: There is a difference now, in that there is more cash on hand now than there was then.

THE COURT: The list presented to the Supreme Court showed how much?

MR. WALTER: I think it was some seventy millions.

THE COURT: Well, there couldn't be much change since the first of April.

MR. WALTER: Well, several millions of dollars a month increase in the cash position.

MR. ASHER: The motion is double-barrelled, in that the first motion is for a change in the plan.

MR. SMITH: No; both phases of this motion contemplate a change in the plan, Judge. Mr. Walter would not have been so dishonest as to tell this Court that there would not be a change in the plan, and he so stated.

MR. ASHER: As far as the convertibles are concerned, we don't think so. It is in the alternative: to direct the Trustee to pay, and then send it back to the Commission; or to send it back to the Commission to report to you.

MR. WALTER: Our position is, if the Court please, that the payment of the R. F. C. will save interest to the estate, will benefit all the other creditors, and, under any plan, our theory is that all the Commission has said, is, "Well, reorganize the debt structure"; but that does not prevent the debtor from paying in advance if it has the funds. That still does not change the plan.

MR. SMITH: Well, your Honor, the money this debtor has on hand, as we showed the Supreme Court, is necessary to make effective the plan. This money is there for distribution, pursuant to the purposes of that plan. And if the money is taken to pay the R. F. C., then it just is not there to do the things the plan contemplates, and it is for that reason that Mr. Walter says this contemplates a change in the plan, and I think it is perfectly obvious it does.

MR. WALTER: I don't agree with the gentleman at all. I submit, under my analysis of the books of account and my discussions with those who are responsible for it, that everything required to make this a going concern can be done after cash payment has been made, at four per cent, to the R. F. C.

THE COURT: I am familiar with those cases which say that until discharge, orders, judgments and decrees in bankruptcy do not have that finality which pertain to other orders and decrees after term-time. I am familiar with those cases. But there have been two orders in this case, one approving the plan and one confirming the plan, both of which have all the finality that an order in bankruptcy can have. And those orders have been approved and affirmed by the Circuit Court of Appeals of this Circuit, and the Supreme Court has declined to interfere.

Now, it is always desirable that the Court be right. That is the first principle that should govern. But it also is desirable that a court's actions should be seemly. And if the action can be right and seemly at the same time it is desirable.

Now, it seems to me that it would be unseemly for me to make any change in this plan after the Circuit Court of Appeals of this Circuit has said that it is a good plan and should be put into effect, and after the Supreme Court of the United States has declined to interfere with that judgment.

It would seem to me to be unseemly to do that, and I certainly should not do that unless I thought there was some overpowering reason to compel me to do that; and I don't think that that overpowering reason exists here.

I think the plan is a good plan. It is unfortunate

that the debtor had debts, but if it hadn't had debts it would not have been here. It is probably no more unfortunate that it owed money to the Reconstruction Finance Corporation than if it had owed it to any other corporation. But the fact is it did owe that Corporation a large sum of money, and accordingly the plan called for the delivery to that Corporation of a large amount of securities.

I thought the plan was good. I still think it is good. It is very fortunate that the Road is accumulating some cash wherewith to meet the obligations of the plan, give it a good start upon what we hope will be a long course of prosperity and long life. But I can't see any reason, there is no reason that I can see, why I should change the plan, and certainly no overpowering reason to cause me to appear to overrule the Circuit Court of Appeals of this Circuit, and the Supreme Court of the United States.

Now, that is one of the phases of the situation.

Now, that decree confirming that plan, having all the finality that any judgment in bankruptcy can have prior to a final discharge, determined that your client has no interest in this property, and that judgment has been affirmed by the Supreme Court of the United States.

Now, perhaps you will say, "Well, the debtor has the moral duty to see that its debt is paid and that, therefore, I have the right to stand here and say, upon behalf of my client, the debtor, that it should be paid."

I can't see any other right that it has. The order confirming the plan cut off the rights of the preferred stockholders and the rights of the common stockholders. Everyone here agrees that it was unfortunate that that was necessary. But it was necessary, and accordingly, it was done.

The corporation had a right to speak for its creditors, no doubt, yet I have always understood that it has been speaking here primarily upon behalf of the stockholders. But their lawsuit is over. Their lawsuit is closed; unless some court which controls my actions tells me to the contrary, the stockholders' lawsuit is over.

There must be an end to everything, and I think the end has come to that lawsuit.

I can't see any good purpose to be served by prolonging this controversy.

I was desirous that your client should be given every opportunity to be heard, not only here but in the reviewing courts, very, very anxious it should have that opportunity. But they have had it, and that lawsuit is over.

The motion will be denied.

MR. SMITH: May I present an order, your Honor?

THE COURT: Yes.

MR. SMITH: Your Honor, may I say this much more?

This matter having been decided, I think it will be of interest to the Court, and I think the record ought to show it: There are two principal mortgages on this property, the general and the first refunding, the one on the western road and other on the eastern road. Those are the two senior debts.

I think the Court will be interested to know that for the four years after the effective date of this plan, that is, 1939, 1940, 1941 and 1942, which includes this bulge in earnings due to the war business, to the end of 1942, we took all those earnings—I am speaking of the brief we filed in the Circuit Court of Appeals—

and we found out what would accrue to the general mortgage bondholder per thousand dollars of claim, if every penny that was available for dividends was paid out which, of course, it would not be. But we went on that assumption, and we found out that the general mortgage bondholders would get, per thousand dollar claim, 2.98 per cent interest during those four years; and that the refunding bondholders, per thousand dollar claim, would get approximately 2.46 per cent interest for that four-year period.

I thought you might be interested in knowing that, your Honor.

THE COURT: Yes; that is interesting.

MR. WALTER: Your Honor, may I be indulged just a moment further on this statement?

THE COURT: Yes.

MR. WALTER: As I understand and as I have regarded my duty as counsel for the debtor—

THE COURT: Yes.

MR. WALTER: (Continuing) —it seems to me that my action in this case should look first to the satisfaction of the debt, and that is the motion I make here, which would satisfy that debt in full to the debenture holders, and if anything were left it would go to the stockholders. I have tried to advise the Court on what I regarded as pertinent matters. I have been pleased to render service. I do think, with all due deference to the Court, that the Interstate Commerce Commission, whose business it is to make the plan, would have been glad to modify the plan, as suggested by you in your opinion in 1940, if the cash were available, and the cash is now available. It was not then available. It is now available.

I think that is all I can say.

(Which were all the proceedings had in the above-entitled cause at the time and place aforesaid.)

AND FORASMUCH as the matters and things above set forth do not otherwise fully appear of record in this cause, Charles M. Thomson, Trustee, tenders this Certificate of Evidence and Transcript of Proceedings had in said cause on the 27th day of April, A. D. 1943, and prays that the same may be certified under the hand and seal of the Judge of this Court, and thereby made a part of the record in such cause; which is accordingly done this 5th day of May, A. D. 1943:

John P. Barnes, (Seal)
Judge.

CERTIFICATE OF CLERK.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Order entered April 27, A. D. 1943, and Transcript of Proceedings and Certificate of Evidence filed May 5, A. D. 1943 in the Matter of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, Debtor, No. 60448, now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 5th day of May, A. D. 1943.

ROY H. JOHNSON,
Clerk.

By ANN G. JOYCE,
Deputy Clerk.

(Seal)